

[REDACTED]

|            |   |                               |
|------------|---|-------------------------------|
| [REDACTED] | ) | CASE NO.                      |
| XX         | ) |                               |
| XX         | ) | JUDGE:                        |
|            | ) |                               |
| Plaintiff, | ) |                               |
|            | ) |                               |
| vs.        | ) |                               |
|            | ) |                               |
| [REDACTED] | ) |                               |
| XX         | ) | <u>COMPLAINT FOR MONETARY</u> |
| XX         | ) | <u>DAMAGES</u>                |
| XX         | ) |                               |
| XX         | ) |                               |
|            | ) |                               |
| Defendant. | ) |                               |

**PARTIES**

- 1. Plaintiff XX (“Plaintiff”), is a Texas corporation engaged in the business of cremation services.
- 2. Defendant XX (“Defendant”), is an Ohio corporation, engaged in the business of selling and renting mobile refrigerated trailers known as “Caster Boxes”, whose registered agent for service exists at the above captioned address.

**NATURE OF ACTION**

- 3. This is an action for compensatory damages, loss of use, and treble damages brought by Plaintiffs as a direct and proximate result of breach of contract, breach of warranties, negligence, misrepresentation, and the ultimate delivery of a nonconforming good – e.g., the Caster Box.

**FACTS**

- 4. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]





22. Plaintiff is a Texas corporation and transacted business in Ohio, thereby purposefully availing themselves of Ohio law and subjecting themselves to the jurisdiction of Ohio courts.

23. Defendant is headquartered in Summit County, making this Court an appropriate venue for this action.

### **COUNT I: BREACH OF CONTRACT**

24. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 23 as if fully rewritten herein.

25. Defendant and Plaintiff were engaged in a transaction for the sale of goods pursuant to R.C. 1302.01.

26. Defendants entered into a contractual relationship with Plaintiffs to provide the sale of a new 12' long x 6'8" wide x 6'1" tall Caster Box.

27. Pursuant to this contractual relationship, Defendant had a duty and obligation to Plaintiff to deliver conforming goods pursuant to R.C. 1302.14 in accordance with the agreed upon terms, express and implied.

28. Defendant willfully and wantonly breached the contract by failing to exercise ordinary care and provide conforming goods and perform, in good faith, the duties and obligations required by law thereof in delivering caster box with internal dimensions of 12' long x 6'4" wide x 6'1" tall, a width four inches (4") less than agreed upon.

29. Within reasonable time after discovery of the non-conformity, Plaintiff notified Defendant of the breach as required by R.C. 1302.65.

30. As a direct and proximate result of Defendants' breach, Plaintiff suffered over \$25,000.00 in damages.

### **COUNT II: NEGLIGENCE**

31. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 30 as if fully rewritten herein.

32. Defendant had a duty to exercise ordinary and reasonable care in performing the duties and obligations required by law thereof.

33. Defendant breached their duties by failing to exercise reasonable care in supplying agreed upon caster box and/or delivering defective goods and/or delivering nonconforming goods, and/or by communicating false information, causing the purpose of Plaintiff's purchase to fail in toto, resulting in a total loss of use.

34. Defendants' breach of the aforementioned duties was willful and wanton and/or amounted to a reckless indifference Plaintiff.

35. The delivery of the nonconforming caster box to the Plaintiffs occurred under such circumstances that, in the ordinary course of events, the loss would not have occurred had ordinary care been exercised by the Defendants.

36. As a direct and proximate result of the Defendants' breach of duty, Plaintiffs suffered injuries and incurred expenses as a result of the loss of use and other costs associated thereof.

### **COUNT III: VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**

37. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 36 as if fully rewritten herein.

38. Defendant is a "supplier" as defined in R.C. 1345.01(C).

39. Plaintiff is a "consumer" as defined in R.C. 1345.01(D).

40. Defendant and Plaintiff were involved in a "consumer transaction" as defined in R.C. 1345.01(A).

41. Defendant has engaged in unconscionable, deceptive and/or unfair acts and practices in connection with the consumer transaction pursuant to R.C. 1345.02.

42. Defendant engaged in deceptive acts that were both false and material to the consumer transaction.

43. Defendant's violation of the Ohio Consumer Sales Protection Act was the direct and proximate cause of Plaintiff's injury.

### **COUNT IV: BREACH OF EXPRESS WARRANTY**

44. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 43 as if fully rewritten herein.

45. Defendant is a "seller" for purposes of R.C. 1302.26.

46. Defendant made an affirmation of fact and/or description when providing Plaintiff with internal dimensions of 12' long x 6'8" wide x 6'1" tall for the 7' x 12' caster box, which was therefore made part of the basis of the bargain.

47. Within reasonable time after discovery of the nonconformity, Plaintiff notified Defendant of the breach pursuant to R.C. 1302.65.

48. As a result of the defect, Plaintiff suffered injury.

**COUNT V: BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE**

49. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 48 as if fully rewritten herein.

50. Defendant knew, or had reason to know, at the time of contracting, the particular purpose for which Plaintiff's wanted to purchase the caster box, which differed from the ordinary purpose for which caster boxes are used.

51. Defendant knew, or had reason to know, that the Plaintiff relied upon the Defendant's expertise and judgment in furnishing or selecting an appropriate caster box to satisfy Plaintiff's particular purpose.

52.. Plaintiff, in fact, relied upon Defendant's expertise and judgment to select and furnish a suitable caster box to fit such purpose.

53. Defendant delivered to Plaintiff a caster box not fit the particular purpose, which Defendant knew of, or had reason to know of.

54. Within reasonable time after discovery of the non-conformity, Plaintiff sufficiently notified Defendant of the breach pursuant to R.C. 1302.27.

55. Plaintiff's injury was a direct and proximate result of Defendant's breach.

**COUNT VI: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

56. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 55 as if fully rewritten herein.

57. Defendant is a "merchant" with respect to goods of that kind as defined in R.C. 1302.27.

58. Defendant delivered a defectively designed caster box not reasonably fit for its ordinary purpose.

59. The defect existed when Defendant delivered the caster box to Plaintiff.

60. The defect was the direct and proximate cause of Plaintiff's injuries.

**COUNT VII: PRODUCT LIABILITY-FAILURE TO CONFORM TO  
REPRESENTATIONS MADE BY SUPPLIER**

61. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 60 as if fully rewritten herein.

62. Defendant is a "supplier" as defined in R.C. 2307.71(15)(a).

63. Defendant represented to Plaintiff ..that the caster box purchased by Plaintiff would have internal dimensions of 12' long x 6'8" wide x 6'1" tall.

64. The caster box delivered to Plaintiff did not contain the represented internal dimensions. Rather, caster box delivered to Plaintiff had internal dimensions of 12' long x 6'4" wide x 6'1" tall.

65. The failure of the caster box to conform to the representations made by Defendant was the direct and proximate cause of Plaintiff's injuries.

**COUNT VIII: SUPPLIER NEGLIGENCE**

66. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 65 as if fully rewritten herein.

67. Pursuant to this contractual relationship, Defendant had a duty and obligation to Plaintiff to deliver conforming goods in accordance with represented internal dimensions of 12' long x 6'8" wide x 6'1" tall.

68. Defendant delivered a nonconforming caster box to Plaintiff with an internal width four inches (4") less than the represented dimension.

69. Defendant's negligence was the direct and proximate cause of Plaintiff's injuries.

**COUNT IX: NEGLIGENT MISREPRESENTATION**

70. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 69 as if fully rewritten herein.

71. Defendant communicated false information to Plaintiff regarding the internal dimensions of the caster box.

72. Defendant failed to use reasonable care or competence in obtaining or communication the information to Plaintiff.

73. Plaintiff justifiably relied upon the information provided by Defendant.

74. Plaintiff suffered injuries as a direct and proximate result of such justifiable reliance.

**COUNT X: FRAUDULENT MISREPRESENTATION**

75. Plaintiffs incorporate the allegations and averments set forth in paragraphs 1 through 74 as if fully rewritten herein.

76. Defendant affirmatively misrepresented the internal dimensions of Plaintiff's caster box to be 12' long x 6'8" wide x 6'1" tall.

77. Defendant had knowledge that the represented internal dimensions were false and material to the transaction.

78. Defendant made the misrepresentation with intent to mislead Plaintiff into relying on it.

79. Plaintiff justifiably relied on Defendant's representation.

80. Plaintiff's reliance on Defendant's representation proximately caused Plaintiff's injury.

**WHEREFORE**, Plaintiffs respectfully pray for relief as follows:

- I. Compensatory damages in excess of twenty-five thousand dollars (\$25,000.00); and
- II. Treble damages for the Defendants' willful and wanton conduct and/or reckless indifference, if allowed by law; and
- III. Reasonable attorney fees, court costs, and pre and/or post judgment interest;
- IV. For any other relief in law or equity that this Honorable Court deems is just and appropriate.



Respectfully submitted,

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[REDACTED]

*[REDACTED]*

**INSTRUCTIONS FOR SERVICE**

The Clerk of Court is hereby instructed to serve Defendants by Certified Mail,  
Return Receipt Requested as follows:

**[REDACTED]**

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[REDACTED]

*[REDACTED]*